

***Second Amendment
Superseding Certain Intervening Law, Compensation,
Interconnection and Trunking Provisions***

This Second Amendment Superseding Certain Intervening Law, Reciprocal Compensation, Interconnection and Trunking Terms ("Second Amendment") is applicable to this and any future Interconnection Agreement(s) between SBC Telecommunications, Inc. on behalf of and as agent for Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Wisconsin Bell Inc. d/b/a SBC Wisconsin, Nevada Bell Telephone Company d/b/a SBC Nevada, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company, and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, SBC Oklahoma, SBC Texas, SBC Arkansas, and SBC Kansas and any of its future affiliates or subsidiaries which are the Incumbent Local Exchange Carrier (hereinafter each individually being a "SBC ILEC," and collectively being the "SBC ILECs") and KMC Data, LLC, KMC Telecom II, Inc., KMC Telecom III, Inc., KMC Telecom III, LLC, KMC Telecom V, Inc., KMC Telecom, Inc., KMC Telecom V, Inc. f/k/a KMC Telecom II, Inc., and KMC Telecom III, LLC f/k/a KMC Telecom, Inc. and any and all affiliates, subsidiaries, successors and assigns which are a Certified Local Exchange Carrier in California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut through December 31, 2004 (hereinafter, "KMC"), whether such Agreement is negotiated, arbitrated, or arrived at through the exercise of Section 252 (i) "Most Favored Nation" (MFN) rights. ILECs and KMC may be referred to individually as "Party" or collectively as the "Parties".

WHEREAS, SBC ILECs and KMC entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") that were approved by the applicable state commissions (the "ICAs"); and

WHEREAS, for the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio and Connecticut, the Parties entered into an Amendment to KMC Contracts Superseding Certain Reciprocal Compensation, Interconnection and Trunking Terms ("Superseding Amendment") which will expire on May 31, 2004; and

WHEREAS, Section 2 of the Superseding Amendment provides, in pertinent part, that if other rates, terms, and conditions have been voluntarily agreed to by SBC ILECs across the thirteen-state region as a whole, KMC may exercise certain rights to obtain the rates, terms, and conditions in their entirety governing reciprocal compensation, POIs or trunking requirements to which SBC ILEC have agreed;

WHEREAS, KMC claims it is entitled under Section 2 of its Superseding Amendment to obtain the Second Amendment Superseding Certain Compensation,

Interconnection and Trunking Provisions by and between SBC ILECs and Level 3 dated May 29, 2003 ("Second Amendment") which supersedes certain intervening law, compensation, interconnection and trunking provisions; and

WHEREAS, SBC ILECs dispute KMC's claim that it is entitled to obtain certain compensation provisions included in the Second Amendment;

WHEREAS, the Parties wish to reduce the risk and expense of litigation of the this dispute by negotiating a compromise and settlement thereto;

WHEREAS, in order to effectuate such compromise and settlement, the Parties wish to enter into this Second Amendment to memorialize certain of the terms and conditions of such compromise and settlement;

WHEREAS, the Parties would not have agreed to such compromise and settlement, or any term and condition thereof, but for their mutual agreement upon each and every term and condition;

WHEREAS, the Parties also agree that neither one will argue or take the position before any regulatory commission or court that this Amendment constitutes an agreement as to whether or not a Party may adopt under Section 252(i) reciprocal compensation provisions or a waiver by either party of their position or their rights as to that issue; and

WHEREAS, simultaneously herewith, the Parties will enter into amendments to their underlying ICAs incorporating the rates, terms and conditions of the FCC's interim ISP terminating compensation plan; a copy of such amendment(s) is attached hereto as Exhibit A and incorporated by reference.

NOW, THEREFORE, for and in consideration of the premises, mutual promises and covenants contained in this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 Scope of Agreement and Lock In:

1.1 The foregoing Recitals are hereby incorporated into and made a part of this Second Amendment.

1.2 Notwithstanding anything to the contrary in this Second Amendment, except for the waivers of intervening law in Section 2.2 and 2.3 and KMC's waiver of 252(i) MFN rights in Section 1.6 which are unaffected by this Section, neither Party waives, but instead expressly reserves, all of their rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, their intervening law rights (including intervening law rights asserted via written notice as to the Separate Agreement) relating to the following actions, which the

Parties have not yet fully incorporated into this Amendment, the underlying ICAs or any future interconnection agreements or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001) (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001); and the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004).

1.3 The Parties agree that this Second Amendment will act to supersede, amend and modify the applicable provisions currently contained in the ICAs. This Second Amendment shall also be incorporated into and become a part of, by exhibit, attachment or otherwise, and shall supersede, amend, and modify the applicable provisions of, any future interconnection agreement(s) between the Parties for the period from June 1, 2004 up through and including December 31, 2004, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) MFN rights.

1.4 Any inconsistencies between the provisions of this Second Amendment and other provisions of the current ICAs or future interconnection agreement(s) described above for the period from June 1, 2004 through and including December 31, 2004, will be governed by the provisions of this Second Amendment, unless this Second Amendment is specifically and expressly superseded by a future amendment between the Parties.

1.5 If the underlying ICAs or any future interconnection agreement(s) expire sooner than December 31, 2004, the Parties agree that the Second Amendment shall not extend or otherwise alter the term and termination rights of the underlying ICAs or any future interconnection agreement(s), but instead, the Second Amendment will be incorporated into any successor interconnection agreement(s) between the Parties through December 31, 2004. Also, the Parties recognize that an MFN interconnection agreement often receives quicker state public utility commission ("PUC") approval than the negotiated Second Amendment which will be affixed to that interconnection agreement. To the extent that the date of state PUC approval of the underlying MFN interconnection agreement precedes the date of state PUC approval of the Second Amendment, the Parties agree that the rates, terms and conditions of the Second Amendment will, upon state PUC approval of the Second Amendment, apply retroactively to the date of such state PUC approval of the underlying interconnection agreement, or June 1, 2004, whichever is later so that the rates, terms and conditions contained herein will apply uninterrupted for the period from June 1, 2004 up through and including December 31,

2004. In no event shall this retroactivity apply prior to the effective date this Second Amendment is signed by KMC.

1.6 KMC hereby waives its section 252(i) MFN rights for any reciprocal compensation, points of interconnection ("POIs") or trunking requirements that are subject to this Second Amendment; provided, however, that if such other rates, terms, and conditions have been voluntarily agreed to by SBC ILEC across the thirteen-state region as a whole, KMC may exercise its rights under section 252(i) to obtain the rates, terms, and conditions in their entirety governing reciprocal compensation, POIs or trunking requirements to which SBC ILEC have agreed. This waiver includes, but is not limited to, any lease, transfer, sale or other conveyance by KMC of all or a substantial portion of its assets, in which case KMC shall obtain the purchaser's agreement to be bound by the terms and conditions set forth herein, but only as to that portion of purchaser's operations resulting from the purchase of KMC.

2.0 Intervening Law/Change of Law:

2.1 The Parties acknowledge and agree that on May 24, 2002, the D.C. Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA decision*"), in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. Dec. 9, 1999) ("the Line Sharing Order"), and vacated and remanded the Line Sharing and UNE Remand Orders in accordance with the decision. In addition, the FCC adopted its Triennial Review Order on February 20, 2003, on remand from the *USTA* decision and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001). Moreover, on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999) and on appeal to and remand by the United States Supreme Court, *Verizon v. FCC, et. al*, 535 U.S. 467 (2002) (all collectively referred to as the "Orders"). In entering into this Second Amendment, and except as otherwise set forth in Sections 2.2 and 2.3 below, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to the Orders and any other federal or state regulatory, legislative or judicial action(s), including but not limited to any legal or equitable rights of review and remedies (including agency reconsideration and court review), and its rights under this Intervening Law paragraph and as to any intervening law rights that either Party has in the current ICAs or any future interconnection agreement(s). Except as otherwise set forth in Sections 2.2 and 2.3 below, if any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory or legislative body or court of competent jurisdiction stays, modifies, or otherwise affects any of the rates, terms and/or conditions ("Provisions") in this Second Amendment or the current

ICAs or any future interconnection agreement(s), specifically including, but not limited to, those arising with respect to the Orders, the affected Provision(s) will be immediately invalidated, modified or stayed as required to effectuate the subject order, but only after the subject order becomes effective, upon the written request of either Party ("Written Notice"). In such event, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in the current ICAs or any future interconnection agreement(s). In the event that any intervening law rights in the current ICAs or any future interconnection agreement(s) conflict with this Intervening Law paragraph and Section 2.2 and 2.3, for the time period from June 1, 2004 up through and including December 31, 2004, this Intervening Law paragraph and Sections 2.2 and 2.3 following shall supersede and control as to any such conflict(s) as to all rates, terms and conditions in the current ICAs and any future interconnection agreement(s) for such time period.

2.2 Notwithstanding the provisions of Section 2.1 or anything else herein, during the period from June 1, 2003 up through and including May 31, 2004, the Parties waive any rights they may have under the Intervening Law/Change of Law provisions in this Second Amendment, the Parties' current ICAs or any future interconnection agreement(s) to which this Second Amendment is added, or any other amendments thereto with respect to any reciprocal compensation or Total Compensable Local Traffic (as defined herein), POIs or trunking requirements that are subject to this Second Amendment. The Parties specifically acknowledge their awareness of various pending regulatory actions which may affect the nature of reciprocal compensation and treatment of internet service provider ("ISP") traffic and other Total Compensable Local Traffic (as defined herein) for compensation purposes. Each Party specifically acknowledges that this Second Amendment is intended to be a binding agreement, without regard to the standards set forth in subsections (b) and (c) of Section 251, made pursuant to Section 252 (a)(1) of the Act, and each Party further acknowledges that this Second Amendment is intended to and shall remain unaffected by and survive any regulatory, legislative or judicial actions which may affect reciprocal compensation or Total Compensable Local Traffic (as defined herein), POIs and trunking provisions set forth herein during the period from June 1, 2003 up through and including May 31, 2004 including, without limitation, the Federal Communications Commission's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Reciprocal Compensation Order"). Except with respect to the specific exceptions in this Section 2.2 relating to reciprocal compensation or Total Compensable Local Traffic (as defined herein), POIs or trunking requirements, during the time period from June 1, 2003 up through and including May 31, 2004, each Party shall otherwise have full intervening law rights under Section 2.1 of this Second Amendment and any intervening law rights in the underlying ICAs or future interconnection agreement(s), and may invoke such

intervening law/change in law rights as to any provisions in the Agreement (including any separate amendments to the Agreement) impacted by any regulatory, legislative or judicial action.

2.3 Notwithstanding the provisions of Section 2.1 or anything else herein, during the period from June 1, 2004 and thereafter up through and including December 31, 2004, the Parties waive any rights they may have under the Intervening/Change of Law provisions in this Second Amendment, the Parties' current ICAs or any future interconnection agreement(s) to which this Second Amendment is added, or any other amendments thereto with respect to any reciprocal compensation or Total Compensable Local Traffic (as defined herein), POIs or trunking requirements that are subject to this Second Amendment including, without limitation, waiving any rights to change the compensation in this Second Amendment in the event that SBC ILEC invokes the FCC terminating compensation plan pursuant to the FCC ISP Reciprocal Compensation Order in any particular state(s); provided however, that if a final, legally binding FCC order related to intercarrier compensation becomes effective after the Effective Date of this Second Amendment including, without limitation, an FCC Order that is issued upon the conclusion of the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, established in Notice of Proposed Rulemaking Order No. 01-132 (April 27, 2001) (referred hereto as an "FCC Order:"), the affected provisions of this Second Amendment relating to reciprocal compensation, Total Compensable Local Traffic (as defined herein), POIs or trunking requirements shall be invalidated, modified, or stayed, consistent with such FCC Order, with such invalidation, modification, or stay becoming effective only upon the date of the written request of either Party once the FCC Order has become effective (the "Written Request"); provided further, however, that in no event shall any provisions of this Second Amendment, relating to reciprocal compensation, Total Compensable Local Traffic (as defined herein), POIs or trunking requirements be invalidated, modified, or stayed until June 1, 2004 at the earliest, consistent with Section 2.2 preceding. In such event, upon receipt of the Written Request, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the ICAs, future interconnection agreement(s) and Second Amendment (including any separate amendments to such agreements). If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such FCC Order shall be resolved pursuant to the dispute resolution process provided for in the ICAs or future interconnection agreement(s) provided, however, that the rates, terms and conditions ultimately ordered by a state commission in an arbitration or negotiated by the Parties shall be retroactive to the effective date of the Written Request following such FCC Order; provided, further, however that in no event shall any provisions of this Second Amendment relating to reciprocal compensation, Total Compensable Local Traffic (as defined herein), POIs, or trunking requirements be invalidated, modified, or stayed until June 1, 2004 at the earliest, consistent with Section 2.2 preceding. Except with respect to the exceptions relating to reciprocal compensation, Total Compensable Local Traffic (as defined herein), POIs and trunking requirements provisions set forth in this Section 2.3, during the time period from June 1, 2004 up through and including December 31, 2004, each Party shall

have full intervening law rights under Section 2.1 of this Second Amendment and any intervening law rights in the underlying Agreement, and may invoke such intervening law/change in law rights as to any provisions in the ICA or future interconnections agreement(s) (including any separate amendments) impacted by any regulatory, legislative or judicial action as well as the intervening law rights relating to an FCC Order set forth in this Section 2.3.

3.0 Reservations of Rights:

3.1 The Parties continue to disagree as to whether ISP calls constitute local traffic subject to reciprocal compensation obligations. By entering into this Second Amendment, neither party waives its right to advocate its view with respect to this issue. The Parties agree that nothing in this Second Amendment shall be construed as an admission that ISP traffic is, or is not, local in nature. The Parties further agree that any payment to KMC under the terms of this Second Amendment shall not be construed as agreement or acquiescence by the SBC ILECs that calls to ISPs constitute local traffic subject to reciprocal compensation obligations. Notwithstanding the foregoing, the Parties agree that SBC ILECs shall make payments for calls to ISPs to KMC pursuant to Sections 4, 5, and 6 herein during the term of this Second Amendment.

3.2 The Parties continue to disagree as to where POIs should be established and under what rates, terms, and conditions KMC may lease facilities from SBC ILEC to establish such POIs. By entering into this Second Amendment, neither Party waives its right to advocate its view with respect to these issues. The Parties further agree that nothing in this Second Amendment shall be construed as an admission with respect to the proper establishment of POIs and the treatment of facilities used to establish such POIs under applicable federal and state law. The Parties further agree that the establishment of POIs pursuant to the rates, terms, and conditions specified in this Second Amendment shall not be construed as agreement or acquiescence by either Party as to the proper establishment of POIs and the treatment of facilities used to establish such POIs. Notwithstanding the foregoing, the Parties agree that KMC and SBC ILEC shall establish POIs pursuant to the rates, terms, and conditions called for in Section 4 herein during the term of this Second Amendment.

3.3. The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol ("VOIP") traffic under the Dispute Resolution provisions of the ICAs or any future interconnection agreement(s) between the Parties through December 31, 2004. The Parties further agree that this Second Amendment shall not be construed against either Party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Second Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

3.4 By entering into this Second Amendment, neither Party waives the right to advocate its views with respect to the use of, and compensation for, tandem switching and common transport facilities in connection with the carriage of Virtual Foreign Exchange traffic. The Parties further agree that nothing in this Second Amendment shall be construed as an admission with respect to the proper treatment of Virtual Foreign Exchange traffic. The Parties agree that the handling of Virtual Foreign Exchange traffic pursuant to the rates, terms, and conditions specified in this Second Amendment shall not be construed as agreement or acquiescence by either Party as to the proper treatment of such traffic. Notwithstanding the foregoing, the Parties agree that all compensation between the Parties for the exchange of Virtual Foreign Exchange traffic shall be governed by the rates, terms, and conditions called for in Section 5.1 herein during the term of this Second Amendment.

4.0 Network Architecture Requirements:

4.1 KMC will establish a physical point of interconnection (POI) in each mandatory local calling area in which it has assigned telephone numbers (NPA/NXXs) in the Local Exchange Routing Guide (LERG). Each Party shall be financially responsible for one hundred percent (100%) of the facilities, trunks, and equipment on its side of the POI.

(a) In California and Illinois, the Parties agree that this section is satisfied if KMC (at its sole option) establishes a POI either:

(i) at each access or local tandem in which tandem serving area KMC has established a working telephone number local to a rate center in that tandem serving area, and each end office where KMC maintains a physical collocation arrangement (but only for those trunk groups associated with that end office); or

(ii) within 15.75 miles of the Vertical and Horizontal coordinate of each rate center where KMC has established a working telephone number local to that rate center.

(b) In Connecticut, Indiana, Michigan, Nevada, Ohio, and Wisconsin, the Parties agree that this section is satisfied if, KMC (at its sole option), establishes a POI either:

(i) at each access or local tandem in which tandem serving area KMC has established a working telephone number local to a rate center in that tandem serving area, and each end office where KMC maintains a physical collocation arrangement (but only for those trunk groups associated with that end office); or

(ii) within each mandatory local calling area where KMC has established a working telephone number local to a rate center in that calling area.

(c) The Parties agree that the waivers contained in Sections 2.2 and 2.3 with respect to changes in law do not apply to state commission-required changes in the

geographic scope or definition of local calling areas. Where the local calling scope has changed, either party may exercise the right to renegotiate the number and location of POIs required under this Second Amendment. This provision shall not be interpreted to affect how the Parties agree to exchange, and compensate one another for, Virtual Foreign Exchange traffic (as defined herein) pursuant to Sections 4, 5, and 6 during the term of this Amendment.

(d) KMC may, at its sole option, establish a POI by obtaining dedicated Special Access services or facilities from SBC ILECs (without the need for KMC equipment, facilities, or collocation at the SBC ILECs' offices), or services or facilities from a third party, by establishing collocation, by establishing a fiber meet, or by provisioning such services or facilities for itself.

4.2 Where KMC leases facilities from SBC ILECs to establish a POI, KMC shall be required to begin paying SBC ILEC for such facilities once the facilities are jointly tested and accepted at a trunk level.

4.3 KMC agrees to abide by SBC ILECs' trunk engineering/administration guidelines as stated in the ICAs, including the following:

4.3.1 When interconnecting at SBC ILECs' digital End Offices, the Parties have a preference for use of B8ZS ESF two-way trunks for all traffic between their networks. Where available, such trunk equipment will be used for these Local Interconnection Trunk Groups. Where AMI trunks are used, either Party may request upgrade to B8ZS ESF when such equipment is available.

4.3.2 The Parties shall establish direct End Office primary high usage Local Interconnection trunk groups when end office traffic (actual or forecasted) requires twenty-four (24) or more trunks over three consecutive months for the exchange of IntraLATA Toll and Local traffic. These trunk groups will be two-way and will utilize Signaling System 7 ("SS7") signaling or MF protocol where required.

4.3.3 The Parties recognize that embedded one-way trunks may exist for Local/IntraLATA toll traffic via end point meet facilities. The Parties agree the existing architecture may remain in place and be augmented for growth as needed. The Parties may subsequently agree to a transition plan to migrate the embedded one-way trunks to two-way trunks via a method described in Appendix NIM. The Parties will coordinate any such migration, trunk group prioritization, and implementation schedule. SBC ILECs agree to develop a cutover plan and project manage the cutovers with KMC participation and agreement.

4.4 Subject to Section 4.6, in order to qualify for receipt of reciprocal compensation in a given tandem serving area as provided in this amendment, KMC will achieve and maintain a network architecture within that tandem serving area such that Direct End Office Trunking ("DEOT") does not fall below 70% for two consecutive months. Subject to Section 4.6, if KMC has not established a POI required by Section

4.0, KMC shall not be entitled to reciprocal compensation for calls from that local calling area.

4.5 For new interconnections, KMC will achieve the DEOT criteria identified in Section 4.4 no later than six (6) months (or such other period as may be agreed to by the Parties) after the parties first exchange traffic for each new interconnection arrangement.

4.6 Under no circumstances shall KMC have any liability or otherwise be penalized under this Second Amendment for non-compliance with the applicable POI and DEOT criteria specified herein during the transition period identified in Section 4.5. Furthermore, KMC will have no liability and will face no penalty for non-compliance with the POI and DEOT criteria specified herein at any time thereafter if such non-compliance results from SBC ILEC's inability to provide staffing, collocation space, trunking, or facilities necessary to satisfy the transition or from SBC ILEC's failure to perform required network administration activities (including provisioning, activation, and translations), regardless of whether SBC ILEC's inability or failure to perform is related to a Force Majeure event as that term is described in the underlying ICAs.

4.6.1 Establishing a New POI in an Existing Local Calling Area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) where KMC provides service as of the date of execution of this Second Amendment. KMC will notify SBC ILEC of KMC's intention to establish a new POI in an existing local calling area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) no later than 90 days prior to the end of the transition period by letter to the SBC ILEC Account Manager and project manager for KMC. KMC and SBC ILEC will meet within 10 business days of such notice to plan the transition to any new POI. This notice and subsequent meeting are intended to give both parties adequate time to plan, issue orders, and implement the orders in the transition period under Section 4.5. Nothing in this paragraph specifically or this Second Amendment generally shall prevent KMC from ordering, or excuse SBC ILECs from provisioning, trunks with respect to an existing POI for new growth or augments during the time that a new POI is being established.

4.6.2 Establishing a POI in a New Local Calling Area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) where KMC does not provide service as of the date of execution of this Amendment. KMC will notify its SBC ILEC Account Manager no later than 90 days prior to the LERG effective date for the new NPA-NXXs it wishes to activate. Joint planning meetings for the new POI will be held within 10 business days of SBC ILEC's receipt of such notification. The outcome of the joint planning meeting will be orders for facilities and trunks for the new POI to complete the establishment of the POI as promptly as possible, and in any event, by the LERG effective date for the new NPA-NXX. The POI must be established in the applicable Local Calling Area (or other applicable serving area in California,

Nevada, Connecticut, and Ameritech territory) prior to the exchange of live traffic.

4.7 At any time as a result of either Party's own capacity management assessment, the Parties may begin the provisioning process. The intervals used for the provisioning process will be the same as those used for SBC ILECs' Switched Access service.

4.8 The movement of existing trunks to new POIs, either on a rollover basis or a disconnect and add basis, will not be counted against any limitations otherwise placed on KMC's ability to order and receive trunks in any given market.

4.9 In a blocking situation, KMC may escalate to its SBC ILEC Account Manager in order to request a shorter interval. The SBC ILEC Account Manager will obtain the details of the request and will work directly with the SBC ILEC LSC and network organizations in order to determine if KMC's requested interval, or a reduced interval, can be met.

5.0 Compensable Traffic:

5.1 If KMC designates different rating and routing points such that traffic that originates in one rate center terminates to a routing point designated by KMC in a rate center that is not local to the calling party even though the called NXX is local to the calling party, such traffic ("Virtual Foreign Exchange" traffic) shall be rated in reference to the rate centers associated with the NXX prefixes of the calling and called parties' numbers, and treated as Local traffic for purposes of compensation.

5.2 Local, Virtual Foreign Exchange, Mandatory Local and Optional EAS traffic eligible for reciprocal compensation will be combined with traffic terminated to Internet Service Providers (ISPs) to determine the Total Compensable Local Traffic.

5.2.1 In determining the Total Compensable Local Traffic, InterLATA toll and IXC-carried intraLATA toll are excluded, and will be subject to Meet Point Billing as outlined in the interconnection agreement and applicable tariffs.

5.2.2 The rates for the termination of intraLATA toll and Originating 8YY traffic are governed by the parties' switched access tariffs.

5.2.3 In determining the Total Compensable Local Traffic, SBC ILECs-transited minutes of use (MOUs) will be excluded from these calculations.

5.2.4 The rates for SBC ILECs-transited MOUs will be governed by the interconnection agreement.

5.3 Subject to applicable confidentiality guidelines, SBC ILECs and KMC will cooperate to identify toll and transiting traffic; originators of such toll and transiting

traffic; and information useful for settlement purposes with such toll and transit traffic originators.

5.3.1 SBC ILECs and KMC agree to explore additional options for management and accounting of toll and transit traffic, including, but not limited to the exchange of additional signaling/call-related information in addition to Calling Party Number.

5.3.2 The Parties agree to explore additional options for management and accounting of the jurisdictional nature of traffic exchanged between their networks.

6.0 Rate Structure and Rate Levels:

During the period from June 1, 2004 up through and including December 31, 2004, Total Compensable Local Traffic as defined herein will be exchanged in all states at the rate of \$.0005 per minute of use. This rate shall be payable to the party on whose network the call is terminating, and shall apply symmetrically for traffic originated by one party and terminated on the other party's network.

7.0 Additional Terms and Conditions:

7.1 This Second Amendment contains provisions that have been negotiated as part of an entire Second Amendment and integrated with each other in such a manner that each provision is material to every other provision.

7.2 The Parties agree that each and every rate, term and condition of this Second Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in the underlying ICAs or interconnection agreement. The Parties agree that they would not have agreed to this Second Amendment except for the fact that it was entered into on a 13-State basis and included the totality of rates, terms and conditions listed herein.

7.3 Except as specifically modified by this Second Amendment with respect to their mutual obligations herein and subject to Section 2.0, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.

7.4 This Second Amendment is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

7.5 The terms contained in this Second Amendment constitute the agreement with regard to the superseding, modification, and amendment of the ICAs and

incorporation into future interconnection agreement(s) through December 31, 2004, and shall be interpreted solely in accordance with their own terms.

7.6 The headings of certain sections of this Second Amendment are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Second Amendment.

7.7 This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

7.8 SBC Telecommunications, Inc. hereby represents and warrants that it is authorized to act as agent for, and to bind in all respects as set forth herein, the individual SBC ILECs.

8.0 Intentionally Omitted.

KMC Data, LLC, KMC Telecom II, Inc., KMC Telecom III, Inc., KMC Telecom III, LLC, KMC Telecom V, Inc., KMC Telecom, Inc., KMC Telecom V, Inc. f/k/a KMC Telecom II, Inc., and KMC Telecom III, LLC f/k/a KMC Telecom, Inc.

Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Wisconsin Bell Inc. d/b/a SBC Wisconsin, Nevada Bell Telephone Company d/b/a SBC Nevada, Pacific Bell Telephone Company d/b/a SC California, The Southern New England Telephone Company, and Southwestern Bell Telephone , L.P. d/b/a SBC Missouri, SBC Oklahoma, SBC Texas, SBC Arkansas, and SBC Kansas by **SBC Telecommunications, Inc., its authorized agent**

Signature:_____

Signature:_____

Name:_____
(Print or Type)

Name:_____

Title:_____
(Print or Type)

Title: President - Industry Markets

Date:_____

Date:_____

AECN/OCN:_____

EXHIBIT A

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
WISCONSIN BELL, INC. d/b/a SBC WISCONSIN
AND
KMC TELECOM III, LLC F/K/A KMC TELECOM, INC.**

Wisconsin Bell, Inc.¹ d/b/a SBC Wisconsin, as the Incumbent Local Exchange Carrier in Wisconsin, (hereafter, "ILEC") and KMC Telecom III, LLC f/k/a KMA Telecom, Inc. as a Competitive Local Exchange Carrier ("CLEC"), an Independent Local Exchange Carrier ("Independent") or Commercial Mobile Radio Service ("CMRS") provider in Wisconsin, (referred to as "CARRIER"), in order to amend, modify and supersede any affected provisions of their Interconnection Agreement with ILEC in Wisconsin ("Interconnection Agreement"), hereby execute this ISP-Bound Traffic Reciprocal Compensation Amendment (Adopting FCC Interim Terminating Compensation Plan) ("Amendment") effective as of June 1, 2003 ("Effective Date"). CLEC and Independent are also referred to as a "LEC."

1. Scope of Amendment

- 1.1 On or about May 9, 2003, ILEC made an offer to all telecommunications carriers in the state of Wisconsin (the "Offer") to exchange traffic on and after June 1, 2003 under Section 251(b)(5) of the Act pursuant to the terms and conditions of the FCC's interim terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).
- 1.2 The purpose of this Amendment is to include in CARRIER's Interconnection Agreement the rates, terms and conditions of the FCC's interim ISP terminating compensation plan for the exchange of ISP-bound traffic lawfully compensable under the FCC ISP Compensation Order ("ISP-Bound Traffic").
- 1.3 This Amendment is intended to supercede any and all contract sections, appendices, attachments, rate schedules, or other portions of the underlying Interconnection Agreement that set forth rates, terms and conditions for the terminating compensation for ISP-bound Traffic exchanged between ILEC and CARRIER. Any inconsistencies between the provisions of this Amendment and provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Amendment.

2. Rates, Terms and Conditions of FCC's Interim Terminating Compensation Plan

- 2.1 ILEC and CARRIER hereby agree that the following rates, terms and conditions shall apply to all ISP-bound Traffic exchanged between the Parties on and after the Effective Date of this Amendment.
- 2.2 Reciprocal Compensation Rate Schedule for ISP-bound Traffic:
 - 2.2.1 The rates, terms, conditions in this section apply only to the termination of ISP-bound Traffic and ISP-bound Traffic is subject to the growth caps and new local market restrictions stated in Sections 2.3 and 2.4 below. Notwithstanding anything contrary in this Amendment, the growth caps in Section 2.3 and the rebuttable presumption in Section 2.6 only apply to LECs.
 - 2.2.2 The Parties agree to compensate each other for ISP-bound Traffic on a minute of use basis, according to the following rate schedule:

¹ Wisconsin Bell, Inc. ("Wisconsin Bell"), a Wisconsin corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Wisconsin Bell offers telecommunications services and operates under the names "SBC Wisconsin" and "SBC Ameritech Wisconsin", pursuant to assumed name filings with the State of Wisconsin. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

June 1, 2003 – June 14, 2003: .0010 per minute
June 15, 2003 and thereafter: .0007 per minute

- 2.2.3 Payment of Reciprocal Compensation on ISP-bound Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where the terminating party utilizes a hierarchical or two-tier switching network, the Parties agree that the payment of these rates in no way modifies, alters, or otherwise affects any requirements to establish Direct End Office Trunking, or otherwise avoids the applicable provisions of the Interconnection Agreement and industry standards for interconnection, trunking, Calling Party Number (CPN) signaling, call transport, and switch usage recordation.

2.3 ISP-bound Traffic Minutes Growth Cap

- 2.3.1 On a calendar year basis, as set forth below, LEC and ILEC agree to cap overall compensable Wisconsin ISP-bound Traffic minutes of use in the future based upon the 1st Quarter 2001 ISP-bound Traffic minutes for which LEC was entitled to compensation under its Wisconsin Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule.

Calendar Year 2001	1st Quarter 2001 compensable ISP-bound minutes, times 4, times 1.10
Calendar Year 2002	Year 2001 compensable ISP-bound minutes, times 1.10
Calendar Year 2003	Year 2002 compensable ISP-bound minutes
Calendar Year 2004 and on	Year 2002 compensable ISP-bound minutes

Notwithstanding anything contrary herein, in Calendar Year 2003, LEC and ILEC agree that ISP-bound Traffic exchanged between LEC and ILEC during the entire period from January 1, 2003 until December 31, 2003 shall be counted towards determining whether LEC has exceeded the growth caps for Calendar Year 2003.

- 2.3.2 ISP-bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and Keep" refers to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

2.4 Bill and Keep for ISP-bound Traffic in New Markets

- 2.4.1 In the event CARRIER and ILEC have not previously exchanged ISP-bound Traffic in any one or more Wisconsin LATAs prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-bound Traffic between CARRIER and ILEC for the remaining term of this Agreement in any such Wisconsin LATAs.
- 2.4.2 In the event CARRIER and ILEC have previously exchanged traffic in an Wisconsin LATA prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-bound Traffic exchanged in that Wisconsin LATA, and that any ISP-bound Traffic in other Wisconsin LATAs shall be Bill and Keep for the remaining term of this Agreement.
- 2.4.3 Wherever Bill and Keep is the traffic termination arrangement between CARRIER and ILEC, both Parties shall segregate the Bill and Keep traffic from other compensable local traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.

- 2.5 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-bound Traffic, and does not include Transit traffic, Optional Calling Area traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.

2.6 ISP-bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, LEC and ILEC agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-bound traffic exchanged

between LEC and ILEC exceeding a 3:1 terminating to originating ratio is presumed to be ISP-bound Traffic subject to the compensation and growth cap terms in this Section 2.0. Either party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, LEC and SBC Wisconsin will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 2.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

3.0 Reservation of Rights

- 3.1 ILEC and CARRIER agree that nothing in this Amendment is meant to affect or determine the appropriate treatment of Voice Over Internet Protocol (VOIP) traffic under this or future Interconnection Agreements. The Parties further agree that this Amendment shall not be construed against either party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, commission established rulemaking dockets, or before any judicial or legislative body.

4.0 Miscellaneous

- 4.1 This Amendment will be effective on June 1, 2003 ("Effective Date"), and will apply to all ISP-bound Traffic exchanged between ILEC and CARRIER on and after that date, contingent upon any necessary commission approval of the Amendment.
- 4.2 To the extent that compensation for intercarrier traffic on or after June 1, 2003 was already billed and/or paid prior to the time that the state commission approved this Amendment, the Parties agree to implement any adjustments, reimbursements, or other "true ups" necessary to make the rates and terms set forth in this Amendment effective for all traffic terminated on and after June 1, 2003.
- 4.3 This Amendment is coterminous with the underlying Interconnection Agreement and does not extend the term or change the termination provisions of the underlying Interconnection Agreement.
- 4.4 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
- 4.5 Every rate, term and condition of this Amendment is legitimately related to the other rates, terms and conditions in this Amendment. Without limiting the general applicability of the foregoing, the change of law provisions of the underlying Interconnection Agreement, including but not limited to the "Intervening Law" or "Change of Law" or "Regulatory Change" section of the General Terms and Conditions of the Interconnection Agreement and as modified in this Amendment, are specifically agreed by the Parties to be legitimately related to, and inextricably intertwined with this the other rates, terms and conditions of this Amendment.
- 4.6 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order

in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC-13STATE state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC-13STATE's right to exercise its option at any time to adopt on a date specified by SBC-13STATE the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

IN WITNESS WHEREOF, this Reciprocal Compensation Amendment for ISP-Bound Traffic (Adopting FCC Interim Terminating Compensation Plan) to the Interconnection Agreement was exchanged in triplicate on this 26th day of May, 2004, by SBC Wisconsin, signing by and through its duly authorized representative, and CARRIER, signing by and through its duly authorized representative.

KMC Telecom III, LLC F/K/A KMC Telecom, Inc.

Signature: [Signature]

Name: Melvin Brown Johnson

(Print or Type)

Title: Vice President & Senior Counsel

(Print or Type)

Date: 5/24/2004

FACILITIES-BASED OCN # 2588

ACNA kmm

Wisconsin Bell, Inc. d/b/a SBC Wisconsin by SBC Telecommunications, Inc. its authorized agent

Signature: [Signature]

Name: Mike Auinbauh

(Print or Type)

Title: For/ President - Industry Markets

Date: 5/26/04